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APR 9 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1396

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM 1983

ALFRED L. EASTERDAY,
Petitioner,

v

DONALD W. COYER and
FRED L. ENGLE, d/b/a/ RESOURCE
SERVICE COMPANY, and JAMES G. WATT,
Secretary of the Interior,
U.S. DEPARTMENT OF THE INTERIOR,
Respondents

ON PETITION FOR A WRIT
OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH COURT

BRIEF FOR RESPONDENTS DONALD W. COYER AND FRED L. ENGLE d/b/a RESOURCE SERVICE COMPANY

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QUESTION PRESENTED

Should this Court grant certiorari to review a decision of the United States Court of Appeals for the Tenth Circuit which held with a prior decision of the United States Court of Appeals for the District of Columbia Circuit involving some of the same parties and all of the same issues, that an arrangement agreed to between Donald W. Coyer, Resource Service Company and officials of the Bureau of Land Management of the United States Department of Interior was effective under the common law of contracts?

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CITATIONS TO LOWER COURT DECISIONS

The decision of the Court of Appeals for the Tenth Circuit reversing the judgment of the United States District Court for the District of Wyoming in this case is reported as Coyer v. Watt, 720 F.2d 626 (10th Cir. 1983). The Court of Appeals relied heavily upon Lowey v. Watt, 684 F.2d 957 (D.C. Cir. 1982).

STATEMENT OF THE CASE

Fred L. Engle d/b/a Resource Service Company (hereinafter "RSC"), operated a filing service to assist individuals in entering lotteries conducted by the United States

Department of Interior. The purpose of these lotteries was to determine the first qualified applicant to lease lands pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §226.

Under 30 U.S.C. §226(c), the Secretary of Interior is authorized to lease public lands which are not within any known geologic structure of a producing oil or gas field to the person first making application for the lease who is qualified to hold it without competitive bidding. Pursuant to statutory authority the Secretary has set up a lottery system rather than administering a "race to the land office" system. When a parcel of land is identified

as available for non-competitive leasing, the Bureau of Land Management announces that the lands are available and sets a period for applications. All applications received during the designated period are treated as simultaneously filed, and the applications, which were made on standard Drawing Entry Cards (hereinafter "DEC's"), go into a drawing. Three DEC's are drawn at random, and the oil and gas lease is awarded to the first drawee, if the first drawee is qualified.

A complete description of the simultaneous filing system is provided in Lowey v. Watt, 684 F.2d 957, 960 (D.C. Cir. 1982), and will

not be repeated here. The Lowey decision is also reproduced in the Petition for Certiorari, Appendix G-1.

Indeed, the facts surrounding RSC's business and the circumstances which led up to the filing of the "Amendment and Disclaimer" document in 1977 are well summarized in Lowey, 684 F.2d at 961-963, and need not be repeated.

Lowey differed from this case in only two respects. First, Lowey involved different clients of RSC who won different drawings for different leases. Secondly, the drawings in Lowey involved lands in New Mexico, while the drawing here was in Wyoming.

The Wyoming drawing here in issue was held during May, 1977. The first drawn DEC was that of Coyer, and the second belonged to the now deceased Alfred L. Easterday. Coyer had entered into a standard service agreement with RSC on January 5, 1977, almost contemporaneously with the execution of the Amendment and Disclaimer on January 13, 1977. Easterday protested the issuance of the lease to Coyer, claiming that the standard service agreement gave RSC an undisclosed and improper interest in Coyer's lease application. The Wyoming State Office of the Bureau of Land Management ("BLM") dismissed the protest, properly hold-

ing that the Amendment and Disclaimer arrangement cured any defects in Coyer's DEC. On March 22, 1978, the Interior Board of Land Appeals ("IBLA") reversed the BLM and held that the Amendment and Disclaimer was ineffective. The IBLA based its determination not on any administrative rules or regulations but on the common law of contracts. In particular, the IBLA held that the disclaimer was ineffective because it had not been communicated to Coyer prior to the drawing and because Coyer had not given any consideration to RSC for the disclaimer.

Coyer and RSC sought judicial review in the United States Dis-

trict Court for the District of Wyoming. That Court determined that the administrative record was inadequate and remanded the case for further proceedings. An administrative law judge found that the Amendment and Disclaimer was ineffective on the same common law principles. The IBLA adopted these findings. Coyer and RSC again sought judicial review, and on cross motions for summary judgment the District Court found that the IBLA ruling was not arbitrary, capricious, an abuse of discretion or contrary to law.

Coyer and RSC appealed to the United States Court of Appeals for the Tenth Circuit which, agreeing

with Lowey v. Watt, reversed the District Court. The holding of the Court of Appeals is also based on common law principles of contract and finds that the Amendment and Disclaimer was legally effective to cure any defect in Coyer's lease application.

It is noteworthy that Petitioner Easterday argues at length about the integrity of the Secretary of Interior's simultaneous leasing system, while the Secretary himself, although a party to both Lowey v. Watt and Coyer v. Watt, has decided not to seek certiorari and has acquiesced in these decisions.

As officers of this Court, counsel for respondents Coyer and

RSC have a duty to inform the Court of other facts pertinent to the relief requested. For that reason, Coyer and RSC have included in the Appendix a photocopy of a certified copy of the death certificate of Alfred L. Easterday.[1] Mr. Easterday died on May 25, 1980, and obviously is not the "petitioner" in this action, despite the petitioner's representations. Mr. Easterday's death occurred while the matter was on judicial remand from the District Court. Rule 25 of the Federal Rules of Civil Procedure and Rule 33 of the Federal Rules of Appellate Procedure provide a mechanism for

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[1]The death certificate was filed under separate cover with the Clerk of this Court.

substituting the real party in interest. Despite the numerous filings and court appearances since May 25, 1980, petitioner "Easterday" has yet to inform any of these Courts of the death of Mr. Easterday and the identity of the real party in interest, if any.

SUMMARY OF ARGUMENT

Petitioner Easterday does not even try to bring this case within the published guidelines for the grant of certiorari, and certiorari should be refused for that reason.

There is no important federal interest at stake in this case, but rather only a very limited situation of little importance to any but the

actual parties and of no continuing significance.

The decisions of the Court of Appeals, the District Court, the Interior Board of Land Appeals and the Bureau of Land Management, below all rested on a question of the common law of contracts. The Court of Appeals common law decision did not "rewrite regulations" or in any way invade the expertise of the Secretary of Interior, who has no special expertise in the common law of contracts.

ARGUMENT

I. THIS CASE DOES NOT FIT THE PUBLISHED CRITERIA FOR CERTIORARI, NOR DOES PETITIONER EASTERDAY EVEN TRY TO FIT THIS CASE WITHIN THOSE GUIDELINES.

Rule 17 of the Rules of the United States Supreme Court indicates the character of the reasons for granting a writ of certiorari. None of the published criteria fit this case.

Two United States Courts of Appeals have reached the issue of the efficacy of the Amendment and Disclaimer arrangement and have decided the question the same way. No State Courts nor exceptional judicial proceedings were involved. The Court of Appeals' decisions in no way conflict with decisions of

this Court. Finally, as shown below this petition for certiorari does not involve any important question of federal law which should be settled by this Court.

For these reasons, petitioner Easterday has failed to even try to show this Court how this case fits the published Rule 17 guidelines, and certiorari should be denied for that reason alone.

II. THIS CASE DOES NOT INVOLVE ANY IMPORTANT QUESTION OF FEDERAL LAW, BUT RATHER ONLY SETTLES A QUESTION OF THE COMMON LAW OF CONTRACTS.

Both the Lowey Court and the Court of Appeals below properly focused on the issue to be decided. It is not a question of due process, of interpretation of federal regula-

tions or statutes, or even a question of federal administrative practice. Rather, at all levels below from the Bureau of Land Management to the United States Court of Appeals, the decision in this case was made on the basis of the common law of contracts. The issue decided was limited to the effectiveness of the Amendment and Disclaimer arrangement negotiated between RSC and the officials of the Bureau of Land Management. Those decisions below purporting to invalidate the Amendment and Disclaimer did so on traditional contract notions of a lack of consideration and the failure to communicate the disclaimer to

persons affected by it. Both the Lowey Court and the Court of Appeals below focused on other tenets of the common law of contracts to find the Amendment and Disclaimer effective, citing such authorities as the Restatement (Second) of Contracts.

The decision of the Secretary of the Interior not to seek certiorari in this case or in Lowey speaks volumes about the lack of any substantial federal interest in these cases. The holding is limited to the special facts of the Amendment and Disclaimer filed by RSC, and the holding can never affect anyone other than RSC, its clients, and the Department of Interior.

RSC no longer uses the challenged form standard service agreement, so the situation presented by this case, by Lowey and by several others will not recur.

The petition for certiorari should be rejected because of the lack of any substantial federal regulatory or statutory interest in the contract question presented here.

III. THE COURT OF APPEALS MADE ONLY A DECISION BASED ON THE COMMON LAW OF CONTRACTS, AND DID NOT "REWRITE REGULATIONS" OR IN ANY WAY INVADE THE EXPERTISE OF THE SECRETARY OF THE INTERIOR.

The Court of Appeals in Lowey and Coyer found that the Department of Interior did not have any regulations addressing how impermissible

interests in a lease application could be waived. The holding of both Courts is only that, once the Department of Interior contractually binds itself to a curing procedure, it cannot arbitrarily and capriciously (and retroactively) change its mind, thus harming innocent applicants who relied on the government's promise that the curing procedure will be effective. Neither the BLM nor the IBLA below quarreled with this basic proposition, but rather focused on the contract law doctrines requiring a peppercorn of consideration and notice. The Court of Appeals below analyzed the question on the very terms chosen by the BLM and IBLA,

but found their decisions of contract law to be contrary to law.

Thus, the decision does not constitute the "rewriting" of regulations. No regulation is affected in the least. Nor does the decision constitute some infringement on the expertise of the Secretary in awarding oil and gas leases. While the Secretary undoubtedly has administrative expertise, the grounds upon which the administrative determinations here should be judged are those which the record discloses the action is based upon. Securities and Exchange Commission v. Chenery Corp., 318 U.S. 80, 87 (1943). The record disclosed that the administrative

decisions were made on the basis of the common law of contracts, and where an administrative decision is not based on expertise in any particular field but rather on general common law principles, like those of contract law, no Court need defer to these legal determinations. Texas Gas Transmission Corp. v. Shell Oil Co., 363 U.S. 263, 270 (1960).

Therefore, no administrative expertise nor regulations were the basis of the decisions below, including that of the Court of Appeals. Rather the Court of Appeals decided a pure legal question on the ground of the common law of contracts.

CONCLUSION

Petitioner "Easterday" has misled the Court, by representing that Alfred L. Easterday is the petitioner here. Mr. Easterday died on May 25, 1980, and petitioner "Easterday" has made no attempt at the District Court, Court of Appeals nor this Court to substitute the real party in interest. The petition for certiorari must be denied because there is no petitioner.

The petition must also be denied because it does not fit any of the published criteria for certiorari. There is no substantial federal interest in the common law questions of contract enforce-

ability presented. Although the petitioner ardently urges that the integrity of the simultaneous oil and gas leasing system requires this Court's intervention, the Secretary of Interior has chosen not to seek certiorari in either of the Court of Appeals decisions which have resolved these questions. Since the Secretary is charged with maintaining the integrity of the oil and gas leasing system, this Court should defer to the Secretary's decision to acquiesce in the determination by the Court of Appeal below.

The petition for certiorari must be denied.

Dated this 5th day of April, 1984.

Respectfully submitted,

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